

MANUEL CHUA KAY, PETITIONER, VS. LIM CHANG, RESPONDENT.*G.R. No. L-5995. May 18, 1956*

Ponente: PARAS, C. J.

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According to the Court of Appeals, "it is clearly established by the evidence that on May 8, 1941, defendant Manuel Chua Kay in consideration of P17,000 executed a deed of mortgage in favor of Lim Chang over his five parcels of land described in Transfer Certificates of Title Nos. 52317 and 32915 of Manila and Rizal, respectively, at 12 per cent interest per annum, payable within one year from the date of execution (Exhs. '1' and 'A-I'); that on September 19, 1941, Manuel Chua Kay executed another deed of mortgage on the four parcels of land described in the aforementioned Transfer Certificate of Title No. 52317 in favor of Lim Chang to secure the payment of another sum of P3,000 within one year from said date (Exh. '2' and 'B-1') ; that mortgagor Manuel Chua Kay failed to pay his obligation upon the maturity of the two deeds of mortgage on May 8, 1942 and on September 19, 1942; respectively', that sometime in 1944 the mortgagor delivered the amount of P5,000 to plaintiff as payment of the interest due on the mortgage debts up to and including August 31, 1943; and that on June 29, 1944, after plaintiff allegedly refused to accept payment in Japanese military notes, defendant deposited with the Court of First Instance of Manila the sum of P22,066.66 in the so-called mickey mouse money (Exh. '5')."

On September 8, 1948, the plaintiff Lim Chang (respondent herein) filed in the Court of First Instance of Manila a complaint for the foreclosure of the two mortgages executed by the defendant Manuel Chua Kay (petitioner herein). In his answer the petitioner set up the defense that the mortgage debt had already been paid by the consignment in the Court of First Instance of Manila of the sum of P22,066.66 in war notes (Civil Case No. 2547). On May 11, 1948, the Court rendered a decision the dispositive part of which reads as follows: "In view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiff and against the defendant for the sum of Pl,301.99, with compounded interest at the rate of twelve per centum per annum from June 30, 1944 to the date of the filing of this complaint, that is, on September 8, 1948, and with interest at the rate of six per centum per annum from the date of filing this complaint until the full amount due is paid. The total amount due mentioned above must be paid by the defendant to the plaintiff or same deposited with the Clerk of Court within ninety days from the receipt of a copy of this decision, otherwise, the real properties which are subject of the contracts of mortgages will be sold at public auction in accordance with law. Upon payment, however, of the total amount due the plaintiff by the defendant within the period mentioned above, the mortgages will be deemed cancelled and discharged, and the said defendant shall be entitled to have in his possession the Certificates of Title Nos. 32915 and 52217 free from any lien or encumbrance in favor of the plaintiff. Without pronouncement as to costs,"

Upon appeal by the respondent, the Court of Appeals rendered on May 19, 1952, a decision with the following dispositive part: "Wherefore, judgment is hereby rendered declaring that the sum of P5,000 tendered by de-defendant to plaintiff as valid payment of the interests accruing on the mortgage debts up to and including August 31, 1943; that the consignment of 722,066.66 made by defendant on June 29, 1944, was invalid and of no force and effect; and sentencing the defendant to pay plaintiff within ninety (90) days from finality of judgment

the total sum of P20,000, the aggregate principal of the two mortgage loans with interest thereon at the rate of 12 per cent per annum, compounded monthly, from September 1, 1943, until fully paid, plus 10 per cent of the total amounts due as attorney's fees. Failure to fully pay the sums which the defendant is sentenced to pay the plaintiff within said period of ninety (90) days, will entitle the latter to the foreclosure of the mortgaged properties. As thus modified, the judgment appealed from is hereby affirmed, without pronouncement as to costs." From this decision the petitioner has appealed to this Court by way of certiorari, assigning the following errors: "I. The Court of Appeals erred in invalidating the consignation made by the petitioner mortgagor in 1944 and in not holding that his liability to the respondent mortgagee was extinguished by such consignation. II. The Court of Appeals erred in not absolving the petitioner from the payment of interest and attorney's fees, or at least in not ordering the revaluation, according to the Ballantyne scale, of the interest which accrued during the Japanese occupation. III. The Court of Appeals erred in awarding excessive damages in the form of attorney's fees."

The Court of Appeals held that the amount of P5,000 delivered by the petitioner sometime in 1944 and accepted by the respondent, in payment of interest due on the mortgage debt up to and including August 31, 1943, was binding in view of the respondent's voluntary acceptance, although subject to the condition that he would insist in the future in the exact compliance with the mortgage contracts.

The Court of Appeals held that the consignation of P22,066.66 was not valid and binding on the respondent and the loss of said sum consigned in Japanese military notes should be borne by the petitioner. The Court of Appeals expressed its views on the point as follows:

"We shall now consider the sum of 722,066.66 consigned by defendant in the Court of First Instance of Manila on June 29, 1944, for the purpose of relieving himself from his liability to plaintiff who allegedly refused the acceptance thereof. Under the second paragraph of Article 1177 of the old Civil Code 'consignation shall have no effect unless made strictly' in accordance with the provisions governing payment, and according to Article 1171 of the same Code, 'payment shall be made at the place designated in the obligation.' Among the stipulation of the mortgage contracts (Exhibits '1' and 'A-1' and '2' and 'B-1') is that payments for the loans, whether for the account of the principal, interests or interests on interests, shall be made in the domicile of the creditor at Dagupan, Pangasinan. As the amount of 722,066.66 was deposited with the office of the Clerk of Court of Manila, we are of the opinion that it was not done strictly in conformity with the provisions of Article 1177 in relation to Article 1171 of the old Civil Code. Besides, according to Article 1178 of the same Code, 'consignation shall be made by the delivery of the things due to the court' It is undeniable that only the amount of 722,066.66 in Japanese military notes was deposited in court on June 29, 1944 (Exh. '5'). Adopting the Ballantyne schedule of values, the Supreme Court held in the case of Hilado V8. De la Costa, No. L-150, April 80, 1949, that one Japanese military peso was in June, 1944, equivalent to 7.0220 in terms of Philippine Commonwealth peso or U.S. dollar. By way of computation said 722,066.66 is equal to only 7485.47 in genuine Philippine peso which is grossly too small for 720,000, the principal alone, excluding the compounded interests thereon from September 1, 1943, to June 29, 1944. Even if we take the face value of the sum of 722,066.66 still, according to the trial court, the same was short by 71,301.99 for the satisfaction of the two mortgage debts. And according to Article 1169 of the old Civil Code 'unless the contract expressly authorizes it the creditor cannot be compelled to accept partial performances of the undertaking of which the obligation consists.' True that consignation was really made, but the same has neither been made in accordance with law, nor accepted by the creditor nor approved by the court, and in any event there is no clear proof before us that the essentials of a valid consignation are here present, specially the conformity of the preferred payment with the terms of the obligation which is to be paid. It should be stated in this connection that strict conformity in that regard is required, for, as Manresa says, * * * el acreedor tan solo, y no el juez puede autorizar la variation que para los derechos de aquel suponga la que se intente en el objeto, cuantia o forma de las obligaciones.' (8 Manresa, 312.) (China Insurance & Surety Co., Inc. vs. B.K. Berkenkotter, C. A.—G.R. No. 332, April 29, 1949, 46 Off. Gaz., No. 11, p. 5466.)

"In view of the foregoing, we are of the opinion and so hold that there was no valid consignment made by defendant on June 29, 1944, and consequently he could not be released from his obligation to plaintiff. For the purpose of this conclusion, it may be asked: Who shall bear the loss of the sum of P22,066.66 in Japanese military notes? While we are not unmindful of the ruling of this Court in the case of *Sia vs. Valencia*, C. A.—G. R. No. 3564-R, that in a valid consignment the loss of the object consigned shall be borne by the creditor, yet, in the instant case there has been no valid consignment and consequently it is the consignor who shall bear the loss."

The petitioner has argued at length on the validity of payments made in war notes during the Japanese occupation. Upon the other hand, the respondent has stressed the fact that under the mortgage contracts the petitioner was bound to pay in Philippine peso or in United States dollars. For the purpose of this decision, we deem it unnecessary to touch the aspects of the case thus referred to by the parties, inasmuch as we find the appeal untenable on two grounds, namely, (1) there was no valid consignment and (2) the consignment case, No. 2547, was not reconstituted.

As to the first, we need only state that, as finding of fact, the Court of Appeals held that "in the instant case there has been no valid consignment and consequently it is the consignor who shall bear the loss." Indeed, quoting the decision in *China Insurance and Surety Co., Inc. vs. Berkenkotter*, C. A.-G. R. No. 332, April 29, 1949, 46 Off. Gaz., No. 11, p. 5466, the Court of Appeals pointed out: "True that consignaion was really made, but the same has neither been made in accordance with law, nor accepted by the creditor nor approved by the court, and in any event there is no clear proof before us that the essentials of a valid consignment are here present, specially the conformity of the preferred payment with the terms of the obligation which is to be paid. It should be stated in this connection that strict conformity in that regard is required, for as Manresa says, '* * * el acreedor tan solo, y no el juez puede autorizar la variacion que para los derechos de aquel suponga la que se intente en el objeto, cuantia o forma de las obligaciones' (8 Manresa, 312.)"

With reference to the second ground, even assuming that there was a valid consignment in Civil Case No. 2547, the failure of the petitioner to have said case duly reconstituted, has reduced the same to a nothingness (*Vda. de Valenzuela vs. De Aquino*, 84 Phil., 507, 47 Off. Gaz., 139), and amounted to a waiver on the part of the petitioner of his right to said consignment (*Felicidad Ambat vs. The Director of Lands*, 49 Off. Gaz., p. 129).

There is no merit in petitioner's second assignment of error, regarding the award of interest and attorney's fees in favor of the respondent, since they are items stipulated in the mortgage contracts and there was default on the part of the petitioner. The interest accrued under the contracts executed before the war. The rate fixed for attorney's fees is obviously reasonable, considering the duration of the litigation and the services rendered by counsel for the respondent in three instances.

Even from the point view of equity, we readily think that the appealed decision is proper, considering that the loans were granted before the war in Philippine currency.

Wherefore, the appealed decision of the Court of Appeals is hereby affirmed, with costs against the petitioner.

Bengzon, Montemayor, Bautista Angelo, Concepcion, Reyes, A., Labrador, and Reyes, J. B. L., JJ., concur.

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